

JAMES G. ROBINSON ET AL.

IBLA 81-391

Decided November 24, 1981

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void. IMC 6084, IMC 6087, IMC 6088, IMC 6089, IMC 6093 through IMC 6097, IMC 23842, IMC 14507, IMC 8944 through IMC 8949.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Evidence: Presumptions -- Evidence: Sufficiency -- Mining Claims: Assessment Work

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. Unsupported and uncorroborated allegations do not constitute probative evidence.

3. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

4. Administrative Authority: Generally -- Constitutional Law: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

5. Administrative Procedure: Hearings -- Constitutional Law: Due Process -- Rules of Practice: Appeals: Effect of -- Rules of Practice: Hearings

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Matthew Mullaney, Esq., Boise, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

James G. Robinson, et al., appeal from decisions dated, respectively, February 4 and 11, 1981, of the Idaho State Office, Bureau of Land Management (BLM), declaring the above-listed unpatented mining claims 1/ listed in attached appendix, abandoned and void for failure to file evidence of assessment work or a notice of intention to hold the claims by December 30, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. The decisions appealed from declared the claims abandoned and void because neither one nor the other of the required documents was filed by December 30, 1980. The claims in issue were located between August 14, 1978, and February 13, 1979. They were recorded between August 28, 1978, and June 29, 1979.

Appellants assert on appeal that:

1/ Due to typing errors acknowledged by the Idaho State Office, claim numbers were incorrectly listed on one of the decisions appealed and on BLM's letter to appellants acknowledging the appeal. That letter lists claim No. IMC 6085, which is not covered by this appeal. The claim numbers listed in the first paragraph of this decision correspond to those in the notice of appeal and to BLM's corrections.

There is substantial circumstantial evidence including statements by third parties which Robinson intends to offer that evidence of assessment work was mailed to the BLM Idaho office on or about September 1, 1980 from the post office in the Rexall Drug Store in Bend, Oregon. The confusion surrounding receipt and handling of filings under FLPMA in the Idaho BLM office, which evidence Robinson would make a matter of record, will make it clear that the mails worked, but the BLM record keeping did not. Confusion over filings at the Idaho BLM office has already been noted by the Board in E. Joe Swisher, 44 IBLA 44, GFS (Min) 1 (1980).

In view of these assertions, the Board, by order dated August 7, 1981, granted appellants 30 days to submit substantiating evidence, including affidavits and other evidence, to show they timely made the required filings. However, no further evidence was received from appellants.

Appellants further assert that BLM failed to send out a reminder advising of the filing deadline. Appellants allege that they were singled out for harsh treatment and denied equal protection of the laws. They request both an evidentiary hearing and an opportunity for oral argument in connection with the appeal.

[1] Section 314(a)(1) and (2) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(c), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

Accordingly, appellants were required to file evidence of assessment work or a notice of intention to hold the claims here involved by December 30, 1980. When appellants failed to timely file one of these documents, BLM properly held the claims to be abandoned and declared them void. Omco, Inc., 55 IBLA 77 (1981); Robert R. Eisenman, 50 IBLA 145 (1980). Compliance with FLPMA and the pertinent regulations is mandatory and this Board is not empowered to make exceptions to the requirements of the statute. Lyman Mining Co., 54 IBLA 165 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] In answer to appellants' challenge that BLM's processing or recordkeeping is responsible for the loss of their filings, we observe initially that there is a rebuttable presumption of regularity which attends the acts of public officer in the proper discharge of their official duties. Bruce L. Baker, 55 IBLA 55 (1981); See, e.g., Phillips Petroleum Co., 38 IBLA 344 (1978); Donald E. Jordan, 35 IBLA 290 (1978); A. G. Golden, 22 IBLA 261 (1975). Appellants' unsupported assertion that BLM mishandled their documents is not sufficient to overcome this presumption. In Joe Swisher, 44 IBLA 44 (1979), cited

by appellant, the circumstances were otherwise. There, the mining claimant was able to show, by means of copies of delivery receipts, that he had in fact mailed certain articles to BLM well in advance of the filing deadline. A recent decision of the Board, H. S. Rademacher, 58 IBLA 152, 156 (1981), contains the following discussion pertinent here:

The issue of what kind of evidence is sufficient to establish the filing of a document despite the absence from the appropriate file of such a document is one which has troubled this Board previously. See David F. Owen, 31 IBLA 24 (1977) (with dissenting opinion). This Board has found the inference of nonfiling drawn from the absence of the document from the case file to be effectively rebutted by a preponderance of evidence in those cases where appellant's assertion that the document was timely filed is supported by substantial corroborating evidence. Bruce L. Baker, *supra*; L. E. Garrison, [52 IBLA 131 (1981)]. In Bruce L. Baker, *supra*, the assertion that the document in issue was actually filed was supported by an affidavit setting forth in detailed chronological sequence the events surrounding the filing which affidavit in turn was corroborated by the dates of notarial seals and filing with the county recorder's office. In the L. E. Garrison case, *supra*, claimant's assertion that the document in issue had been filed with BLM was corroborated by an affidavit of a subsequent telephone conversation with a BLM employee who opened the mailing and acknowledged timely receipt of the required document. The phone conversation was in turn documented by a long-distance telephone bill reflecting the call. On the other hand, the Board has held that uncorroborated statements, even where placed in affidavit form, to the effect that a document was filed are not sufficient to overcome the inference of nonfiling drawn from the absence of the document from the file and the practice of BLM officials to handle properly filings of legally operative documents. See Lawrence E. Dye, [57 IBLA 360 (1981)] at 364; John Walter Starks, [55 IBLA 266 (1981)]; Metro Energy, Inc., 52 IBLA 369, 371 (1981); Charles J. Babington, 36 IBLA 107 (1978).

Although invited to do so, appellants herein have offered no substantiating evidence. We are constrained to find, therefore, that appellants' filings were not timely received by BLM.

[3] BLM personnel were under no obligation to remind appellant of filing deadlines. Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); Lyman Mining Co., 54 IBLA 165 (1981).

[4] Appellant's charge that he was treated unfairly and deprived of due process is without merit. To the extent they have been considered by the courts, the regulations have been upheld. See Topaz

Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981). In any event, it has frequently been held that an appeals Board of this Department has no authority to declare a duly promulgated regulation invalid. Exxon Co., U.S.A., 45 IBLA 313 (1980). With reference to the statute, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an act of Congress is constitutional. Lynn Keith, supra; Alex Pinkham, 52 IBLA 149 (1981), and cases therein cited. Jurisdiction of such an issue is reserved exclusively to the judicial branch.

[5] Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final. George H. Fennimore, 50 IBLA 280 (1980). Oral argument would serve no useful purpose. The request for hearing and oral argument are therefore denied.

Therefore, pursuant to the authority delegated the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

APPENDIX

<u>Claim</u>	<u>Date Located</u>	<u>Date Recorded</u>
IMC 6093	August 25, 1978	August 28, 1978
IMC 6094	August 25, 1978	August 28, 1978
IMC 6095	August 25, 1978	August 28, 1978
IMC 6096	August 25, 1978	August 28, 1978
IMC 6097	August 28, 1978	August 28, 1978
IMC 8944	November 21, 1978	January 4, 1979
IMC 8945	November 20, 1978	January 4, 1979
IMC 8946	November 21, 1978	January 4, 1979
IMC 8947	November 21, 1978	January 4, 1979
IMC 8948	November 20, 1978	January 4, 1979
IMC 8949	November 21, 1978	January 4, 1979
IMC 14507	April 8, 1979	June 29, 1979
IMC 23842	February 13, 1979	February 20, 1979

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